IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2558 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUPERRINTENDING ENGINEER - Petitioner(s)

Versus

NAGINBHAI DHANJIBHAI SINGHI - Respondent(s)

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Appearance :

MS PJ DAVAWALA for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 30th November, 1998 passed by the Industrial Tribunal (Central) in Complaint [I.T.C.] No. 8

of 1996 in Reference [I.T.C.] No. 12 of 1994 whereby the Industrial Tribunal has directed the petitioner to reinstate the respondent on his original post with continuity of service along with 30% back wages.

2. The short facts of the case are that the respondent was working as a Driver with the petitioner on causal basis. It is the case of the petitioner that since his services were not required further, his services were terminated w.e.f. 9th September, 1994. Feeling aggrieved by the said order, the respondent raised an industrial dispute which was ultimately referred to the Industrial Tribunal for adjudication. The Industrial Tribunal after considering the case on merits, passed the impugned award. Hence, this petition.

3. I have heard the learned advocates for the respective parties and have perused the materials produced on record. While admitting the matter on 2nd November, 1999, this Court had stayed the operation of the impugned award qua back wages only. Since the respondent is already reinstated in service, the only question which is required to be considered is qua back wages only.

4. Having gone though the impugned award, it appears that the Industrial Tribunal has not given any cogent reasons as to on what basis it has awarded back wages to the respondent. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176 a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

5. In the case of General Manager, Narayan Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137, it has been held that an order of payment of back wages should not be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Hence, the order awarding back wages is required to be quashed and set aside.

6. In the result, the petition is partly allowed. The impugned award dated 30th November, 1998 passed by the Industrial Tribunal (Central) in Complaint [I.T.C.] No. 8 of 1996 in Reference [I.T.C.] No. 12 of 1994, qua back wages is quashed and set aside and rest of the award is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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